

SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.

JUDGE

NEW CASTLE COUNTY
COURTHOUSE
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September 15, 2006

Brian Ahern, Esquire
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RE: State of Delaware v. Ralph J. Foster, Jr.
ID No. 0603014297

Dear Counsel:

As the Court advised counsel at the conclusion of the suppression hearing on September 8, 2006, the only remaining issue not orally decided at the hearing was whether the defendant has standing to object to a warrantless search of hotel room 113 located at the AmericInn. Based upon the limited evidence presented to the Court at the hearing, it finds the defendant has failed to present sufficient facts to support that he had standing to object to the search, and the evidence will not be suppressed.

The Court starts from the premise that registered guests of a hotel clearly enjoy a reasonable expectation of privacy.¹ They have paid for the room, have disclosed their identity by registering with the hotel, and the room has become a temporary shelter similar to an individual's home.² It is undisputed here, based upon the testimony of the police officer and her contact with hotel management, that Mr. Foster was not a registered guest. In fact, the hotel room was in the name of Richard Bennett who appears to be the brother of Mr. Foster's co-defendant. So at best, the defendant was an unregistered guest of the Bennett's at the AmericInn. As such, society's recognition of the expectation of privacy under such circumstances is significantly reduced.³

However, this does not mean that the defendant could still not have presented a sufficient factual record to support his position. The defendant could have called hotel employees to testify concerning the interaction with him at the hotel; the defendant could have testified about his use of the room; the co-defendant's brother could have testified about who had permission to use the room; evidence could have been introduced concerning personal items of the defendant in the room or even that the defendant had access to a

¹*Stoner v. California*, 376 U.S. 483, 489-90 (1964) (Despite the hotel clerk providing police entry into a hotel room, because the police neither had a search warrant nor an arrest warrant, and since the defendant had an expectation of privacy in his hotel room, the search was deemed unconstitutional. "[W]hen a person engages a hotel room, he undoubtedly gives 'implied or express permission' to 'such persons as maids, janitors or repairman' to enter his room 'in the performance of their duties.' But the conduct of the night clerk and the police [sic] in the present case was one of an entirely different order." (internal citations omitted)); see also, *Hanna v. State*, 591 A.2d 158, 164 (Del. 1991) (An overnight guest who seeks shelter for himself and his property has an expectation of privacy whether it be in a hotel room or in the home of a friend.).

²*Id.*

³*Wilson v. State*, 812 A.2d 225 (Del. 2002) (The defendant being alone in someone else's home, barefoot and with a few belongings, was not sufficient evidence for the defendant to establish an expectation of privacy rising to the level of standing to contest a search.); see also *Castro v. Texas*, 914 S.W.2d 159, 164 (Tex.Ct.App. 1995) ("[A]n unregistered person sharing hotel rooms with a registered guest who paid for those rooms . . . did not have the same expectation of privacy as the registered guest. . . ." (citations omitted)); *U.S. v. Conway*, 73 F.3d 975, 979 (Kan. 1995) (The defendant lacked standing to contest a search of the hotel room because he failed to establish he was an invited guest of the registered guest, and therefore, could not establish he had a reasonable expectation of privacy.); *Sharpe v. Commonwealth*, 605 S.E.2d 346 (Va.Ct.App. 2004) (The police officers received information from an informant, watched the parties coming and going from the hotel room, and checked with the hotel to determine the defendant was not a registered guest of the hotel. The defendant failed to establish an expectation of privacy within the hotel room searched since he could not establish that he was "the registered occupant of the room or that he was sharing it with the person to whom the room was registered." (citations omitted)).

key to open the room; all which would have been evidence to potentially establish by a totality of the circumstance that the defendant had a sufficient interest in this particular hotel room to justify the Court recognizing a privacy interest. Unfortunately for the defendant, he was unable to provide the Court with such a record, and even from the limited information provided to the Court, it is obvious why he could not. This hotel room was not a place where the defendant was temporarily living nor was it being used for legitimate business transactions. This was the place the defendant was using as a distribution point for his and his co-defendant's illegal drug activity. Therefore, since the issue of whether there was a reasonable basis to support the police search of the hotel had not been decided by the Court prior to the hearing, counsel for the defendant was caught between conflicting interests. The more information he introduced as to the use of the room by the defendant, the more incriminating the case against his client became. However, without such information, he had difficulty establishing the standing requirement which is his burden to establish.

While the Court recognizes the dilemma of counsel, it is required to make its ruling based upon the evidence it has before it. When the Court reviews the totality of the evidence, it finds the defendant simply has failed to establish any specific basis to support his Fourth Amendment claim of protection in this hotel room. Therefore, the Court finds the defendant lacks standing to object to the warrantless search, and the evidence found in the hotel room may be introduced at the defendant's trial.

IT IS SO ORDERED.

Sincerely yours,

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary